

**Editor's note: Reconsideration denied by order dated May 29, 1980; appealed -- aff'd, Civ.No. 80-1782 (D.D.C.), aff'd, No. 80-1782 (D.C.Cir. Oct. 6, 1981), cert. denied, 456 U.S. 905 (March 29, 1982)**

ADMINISTRATOR OF ESTATE OF  
VALENTINE M. O'GRADY

IBLA 79-542

Decided April 21, 1980

Appeal from a decision of the California State Office, Bureau of Land Management, denying reinstatement of noncompetitive oil and gas lease CA 2789 terminated for failure to make timely payment of annual rental. CA 2789.

Affirmed as modified.

1. Oil and Gas Leases: Reinstatement: Oil and Gas Leases: Rentals

Under 30 U.S.C. § 188(c) (1976) the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment unless payment is tendered at the proper office within 20 days after the due date.

APPEARANCES: Richard P. Singler, Assistant Vice President, for La Salle National Bank, Administrator of Estate of Valentine M. O'Grady.

OPINION BY ADMINISTRATIVE JUDGE GOSS

This appeal is from the decision of the California State Office, Bureau of Land Management (BLM), denying reinstatement of noncompetitive oil and gas lease CA 2789. The oil and gas lease CA 2789 was issued to Valentine M. O'Grady on April 28, 1975, effective May 1, 1975. The annual rental was due each of the following years on or before May 1. Lessee died September 19, 1978. BLM did not receive the annual rental due for 1979 until July 3, 1979.

The late rental was submitted by Richard P. Singler, Vice President of La Salle National Bank, accompanied by a change of address for Valentine M. O'Grady, care of Singler. BLM stated in its decision that a change of address accompanying a late rental was not sufficient to bring the late rental within the "justifiable or due to lack of reasonable diligence" provisions allowing reinstatement 43 CFR 3108.2-1.

In its statement of reasons on appeal, appellant states that the rental was not paid on time because of the original lessee's death; and that appellant has made a diligent effort to investigate decedent's affairs and make all rental payments.

[1] In some instances reinstatement can be considered; reinstatement here, however, is precluded by 30 U.S.C. § 188(c) (1976). The statute provides in part:

(c) Where any lease has been or is hereafter terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of rental due, but such rental was paid on or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if -- \* \* \* .  
[Emphasis added.]

The statute is dispositive. Appellant, by failing to tender late payment within 20 days after the anniversary date, is barred from having the lease considered for reinstatement. As the Board has consistently held, under section 188(c) the Secretary has no authority to reinstate a terminated lease unless payment has been tendered within 20 days of the due date. John A. Steele, 41 IBLA 49 (1979).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Joseph W. Goss  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

